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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 LAURIE BEATTY, *et al.*,

10 Plaintiff,

11 v.

12 KING COUNTY DEPARTMENT OF  
13 METROPOLITAN SERVICES,

14 Defendant.

Case No. C08-0898RSL

ORDER GRANTING IN PART  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

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16 **I. INTRODUCTION**

17 This matter comes before the Court on defendant's motion for partial summary  
18 judgment to dismiss several claims. Defendant seeks to dismiss (1) Doug Beatty's claim  
19 for loss of consortium, (2) claims by Laurie Beatty ("Beatty") occurring after she signed  
20 her complaint on July 24, 2007, and (3) Beatty's claim pursuant to Title VII of the Civil  
21 Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.* After defendant filed this  
22 motion, the parties stipulated to dismiss Doug Beatty's claims. Dkt. #47. This order will  
23 address only Beatty's claims.  
24

1 For the reasons set forth below, the Court grants defendant's motion in part.

## 2 II. DISCUSSION

### 3 A. Background Facts.

4 Beatty has worked for King County for over twenty years as a transit operator.  
5 She alleges that she was the victim of sexual harassment by a co-worker, John Henry  
6 James, and that James ultimately committed an assault by striking her in the back of the  
7 head. On or around July 24, 2007, Beatty signed a claim for damages form and submitted  
8 it to King County (the "claim"). The claim includes allegations of assault, sexual  
9 harassment, gender discrimination, and race discrimination. Beatty is Caucasian. The  
10 claim asserts that Beatty has suffered physical, psychological, and emotional injuries as a  
11 result of the acts set forth in her claim. Declaration of Anne Norris (Dkt. #30), Ex. A.  
12

13 Beatty filed a charge with the Equal Employment Opportunity Commission  
14 ("EEOC") on November 19, 2007. The EEOC continues to assert jurisdiction over her  
15 claim and has not issued a decision or right to sue letter.  
16

17 Plaintiffs filed their complaint in King County Superior Court on May 30, 2008.  
18 Defendant removed the case to this Court.

19 Beatty alleges that in August 2008, her union representative, Kenny McCormick,  
20 threatened and sexually harassed her on county property. She alleges that defendant is  
21 responsible for the conduct and her resulting damages. Those allegations are not  
22 contained in her claim, in her complaint in this case, or in her amended complaint. After  
23 defendant filed this motion, Beatty filed another tort claim with King County regarding  
24 the incident with McCormick (the "second claim").  
25

1 **B. Summary Judgment Standard.**

2 Summary judgment is appropriate when, viewing the facts in the light most  
3 favorable to the nonmoving party, the records show that “there is no genuine issue as to  
4 any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R.  
5 Civ. P. 56(c). Once the moving party has satisfied its burden, it is entitled to summary  
6 judgment if the non-moving party fails to designate, by affidavits, depositions, answers to  
7 interrogatories, or admissions on file, “specific facts showing that there is a genuine issue  
8 for trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).  
9

10 All reasonable inferences supported by the evidence are to be drawn in favor of the  
11 nonmoving party. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir.  
12 2002). “[I]f a rational trier of fact might resolve the issues in favor of the nonmoving  
13 party, summary judgment must be denied.” T.W. Elec. Serv., Inc. v. Pacific Elec.  
14 Contractors Ass’n, 809 F.2d 626, 631 (9th Cir. 1987). “The mere existence of a scintilla  
15 of evidence in support of the non-moving party’s position is not sufficient.” Triton  
16 Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). “[S]ummary  
17 judgment should be granted where the nonmoving party fails to offer evidence from  
18 which a reasonable jury could return a verdict in its favor.” Id. at 1221.  
19

20 **C. Analysis.**

21 Defendant argues that the Court should dismiss any claims Beatty might have after  
22 she signed her complaint on July 24, 2007 for failure to comply with RCW 4.96.020. The  
23 claims filing statute provides that before a person may file a lawsuit seeking damages  
24 against a local government entity, he or she must file a verified claim for damages and  
25

1 then wait at least sixty days. Beatty filed her second claim on January 30, 2009, so she  
2 cannot yet commence a lawsuit based on the substance of that claim.

3 Defendant's request to dismiss is premature because Beatty's operative complaint  
4 does not include the McCormick incident. Nor has Beatty moved to amend her complaint  
5 to include it. The Court will not dismiss a claim that has not been asserted in this case.  
6 Rather, if Beatty moves to amend her complaint to add the McCormick incident,  
7 defendant can assert its arguments in opposition to any such motion.  
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9 Defendant contends that the Court should dismiss Beatty's Title VII claim because  
10 she filed her complaint while the EEOC was investigating her charge and without first  
11 obtaining a right to sue letter. After defendant filed this motion, plaintiff consented to the  
12 dismissal of her Title VII claim on that basis. Beatty's Title VII claim is dismissed.

13 Beatty requests that she be permitted to amend her complaint if the EEOC issues a  
14 right to sue letter. The Court will not grant her that permission now. Rather, if the EEOC  
15 subsequently issues a right to sue letter, Beatty may move to amend her complaint and the  
16 Court will consider whether to grant her leave to amend.<sup>1</sup>  
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### 18 **III. CONCLUSION**

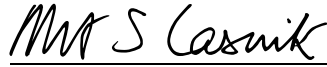
19 For all of the foregoing reasons, the Court GRANTS IN PART defendant's motion  
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23 <sup>1</sup> The Court notes that obtaining a right to sue letter from the EEOC is not a mere  
24 procedural technicality as Beatty contends. Rather, that requirement serves a strong  
25 public policy of permitting the EEOC to consider a claim first, and if a violation has  
26 occurred, to facilitate a resolution.

1 for partial summary judgment (Dkt. #29) and dismisses Beatty's Title VII claim.

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3 DATED this 19th day of March, 2009.

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6 Robert S. Lasnik  
7 United States District Judge  
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